# THE COURTS.

### THE STOKES BILL OF EXCEPTIONS.

Argument of Counsel for the Prisoner-A Long Day's Session and No Result-The Main Points in the Bill of Exceptions Reviewed-Case Still On.

### THE JUMEL ESTATE CASE.

The Long Look-Ahead Shortening-Very Little More To Be Testified to, Advanced or Rebutted-Madame Jumel's Will Put in Evidence.

### THE PALMER-FOLEY INJUNCTION.

Appeal from Judge Barbour's Decision Motion to Hear the Case Before the Full Bench of General Term Denied-The Temporary Injunction to Stand in the Meantime.

Comptroller Green and Another Mandamus.

An Old New Court House Claim---Officers of the Courts After Their Salaries .-- Enforcing a Decision of the Court of Appeals.

### BUSINESS IN THE OTHER COURTS.

Summaries-Convictions and Sentences in the General Sessions-Decisions-Death of a Court Official.

The Court of Over and Terminer, Judge Brady on the bench, entered yesterday upon its February term. A very forcible and most timely charge was delivered by the Judge to the newly empanelled and King's counsel two weeks to prepare for trial and then announced his determination to proceed with the trials of the murderers in the Tombs till he has gone through the list, and further, that in order to clear the City Prison he will sit till next July if necessary.

From the late decision of Judge Barbour, at

Special Term of the Superior Court, granting an injunction restraining Mr. John Foley from attempting to assume the functions of Deputy Chamberlain, pursuant to his appointment by the Comptroller, an appeal was taken yesterday to the Superior Court, General Term, Owing to objections to Judge Barbour, who is one of the judges holding the latter Court during the present term, sitting in review of his own decision, the argument upon the appeal was postponed till the next term of the Court. Meanwhile the previous injunction continues till the decision upon the appeal.

The tide of mandamuses against the Comptrolle is still at its flood. Three were granted vesterday by Judge Davis, holding Supreme Court, Chambers, nd in another case, the latter, however, against the City Chamberlain, and which was taken to the Court of Appeals, the judgment of the latter Court was made the judgment of this Court.

The hearing of the case of George W. Bowen vs.

Nelson Chase was resumed yesterday in the United States Circuit Court before Judge Shinman and the special jury. Most of the day was taken up with the reception of documentary evidence on the part of the defendant. The testimony for the defence will probably close to-day.

Yesterday, in the United States Court, Commis sioner Davenport rendered his decision in the case of Colonel Blood, Tennie C. Claffin and Victoria C. Woodhull, who had been charged with having sent through the mails copies of a newspaper edited by them alleged to contain obscene allusions in recides that, although he is of opinion it was not the intention of Congress, in passing a law dealing with obscene publications, to make it applicable to newspapers, he would hold the defendants to await the action of the Grand Jury, so that an opportunity may be given to a court of law to pas npon the question involved.

# THE STOKES BILL OF EXCEPTIONS.

Legal Quibbles Presented and Judicia Ruling Thereon to Follow-Argument of Counsel for Stokes-A Great Deal of Noise and Little Wool-Argument Still On.

Yesterday, in the Court of Over and Terminer. after the business of the February term had been arranged by Judge Brady, and for which two important murder trials are set down-the case of the People vs. John Scannell, for the murder of Thomas Donohoe in November, and the trial of James C. King for the murder of Anthony F. O'Neill. to follow immediately on the termination of the Scannell trial-Judge Brady vacated the bench, and left its presidency for the motion and argument of counsel on the proposed bill of exceptions in the Stokes trial.

There was very little interest manifested in th later proceedings of the day—the hearing of argu-ment in the Stokes case—although at the opening of the Court there was a very crowded court room, and the numerous friends of Scannell and the few friends that care to follow the fortunes of the unfortunate King made up a large audicirce.

Judge Brady occupied the bench of Oyer and

Terminer at its opening, which the law required him to do, and after addressing the Grand Jury, fixing the trial of the parties arranged on the calendar to come before him, adjourned his branch of the Court, leaving the consideration of the Stokes case to be continued by Judge Boardman.

ARGUMENT IN THE STOKES CASE.

That official immediately called on counsel for the prisoner Stokes to resume argument in further-ance of the motion for a bill of exceptions.

Mr. Dos Passos, on whom the heavy work of pre paring affidavits, collating from testimony and presenting his points in the best possible shape was devolved, proceeded to address the Court, taking up his points at where they were left off on Saturday. Counsel briefly recapitulated the points previously advanced in favor of the motion-the absence of the Judge and prisoner during different portions of the trial, the strong expressions of opinion on the part of jurors, the examination of pistols and of the Grand Central Hotel by jurors and the newly discovered evidence of Mary Bean. He continued his argument, after stating that in the Foster case it had been decided there sould be no trivialities permitted, that while it was very doubtful whether this motion could the was very doubtful whether this motion could be made anywhere than in this Court, and that the right of appeal from its decision was also denbiud, the right of the Court to hear this motion was well settled. He quoted on this point a very large number of authorities and cases showing that the practice of moving before the Court which tried the case had been recognized and approved. He also quoted cases to show that this could be done after sentence. In every other State almost of the Union the motion to the Oyer and Terminer could be made on the merits, though he conceded in this State it could only be on irregularities. The Court of General Sessions had by statute, but not by common law, the power to grant new trials even on the merits. Proceeding to the merits, the first ground was the expressed hostility of three jurors. Mr. Manchester was shown to have said he would thang STOKES ANYHOW; to have said immediately before the trial, "If I get 2n the jury on Stokes I will hang him anyhow,"

And the proof of this was from most respectable men, who were astonished he should, having so strongly shown that he had prejudged the case, have got on the jury. His excuse that one of the remarks was made jestingly did not exonerate him. After he was summoned on the jury he said that he would hang Stokes quicker than lightning, and this could not be received as a jest by the Court. It was his duly to say to the Court that he had expressed his opinion as to be unfit for a juror. As to Mrs. Watts' statement that Yost said that hanging was too good for Stokes, he did not know Mrs. Watts' statement that Yost said that hanging the said merely that he did not know Mrs. Watts, and didn't believe he had said anything of the kind. Mr. Tremain here interrupted, saying that he had just discovered that when Mrs. Watts was seeking a certificate to obtain credit for her rent sir. Yost signed a paper recommending her as trustworthy. He asked leave to introduce an affidavit of that fact.

The Court said it did not suppose that could be

a certificate to obtain credit for her rent sir. Yost signed a paper recommending her as trustworthy. He asked leave to introduce an affidavit of that fact.

The Court said it did not suppose that could be done without consent of the ether side.

Counsel continuing said—Mr. Bechstein did not deny the allegation that he used similar expressions positively, but that he did not believe he had used them. That the expression of such opinions unfitted him for the trial of the case needed hardly any argument. It was not merely an opinion of the guilt or innocence of the prisoner; it was a fixed conclusion, "Stokes ought to be hanged." He submitted that under the new act these objections were fatal. It was true that they believed and testified they could try on the evidence solely, but when it appeared that in that their testimony was wrong, that their expressions showed such a conviction that under the conditions of human nature they could not disregard it, the Court would interiere. This was not a technical matter, and counsel cited especially on this boint the decisions of the United States Courts, in which the rule is somewhat similar to the rule under the new statute. The English cases cited show that the expression of an opinion, and especially of such opinions as ascribed to Manchester, Yost and Bechstein, was regarded as much stronger evidence of unfitness in a juror than mere formation of an opinion revealed by a juror's own statement. He quoted both American and English law to show that the prisoner was entitled to unbiassed jurors. Counsel then read the statute of 1870, and claimed that it voltated the United States constitution, which provided for an impartial jury for the trial of persons charged with crime. This has not been re-enacted in this State in terms, but our State constitution, should remain inviolate forever. He argued that the taw was in opposition to the clause in either constitution. The meaning of the word was illustrated in the right of trial partial, and there was no provided that it was u

had made such an order. Mr. Justice Boardman said he had recommended to the jury not to read anything in the newspapers

Mr. Justice Boardman said he had recommended to the jury not to read anything in the newspapers in reference to the case.

Mr. Dos Passos claimed that the jury were bound to follow such recommendation, and cited cases to show that the judgment should be reversed because of their neglect. He cited Eastwood against the People (3 Parker, 25), where a new trial was granted because one-half the jury, in the absence of the other half, went to the place of the afray and viewed it without the consent of the Court or counsel. In that case the jury were merely out for recreation, and it was not pretended that the visit to the scene of the homicide had any influence on the jury, and the Court would not inquire upon that point in setting aside the verdict for such irregularity. He quoted decisions of the same general bearing in other States, in which the Court refused to consider the testimony as binding. He contended that for all the purposes of a fair and constitutional trial the prisoner was not present when the verdict was given, and that he was, not present when the jury received 'supplemental instructions. Under these decisions it was no answer that the prisoner was not prejudiced, or formal, or technical. But who could say that he was not prejudiced? Whe could say that he was not prejudiced? Whe could say that he could not have suggested questions which escaped the notice of his counsel? This right could not be waived by the prisoner's counsel. That had been held where there had been a formal waiver by counsel, and there were cases where it had been decided the prisoner could not himself waive it. With regard to the

JUDGE'S ABSENCE
during the summing up of Mr. Beach, the law bade
a prisoner to exact all the requirements of the
law. He referred to the case of the People vs.
White; which denied that the presence of a quorum
of the judges in Oyer and Terminer was all that
was needed. But the Court would see that the
reasoning negatived the order that the Court
could be complete without any Judge.
Mr. Dos Passos closed his argument at ten
minutes to four o'clock when the Court adjourned
till this morning.

# THE JUMEL ESTATE CASE.

The Suit of Bowen vs. Chase-Further Testimony for the Defence-The Evi-

The hearing of the case of George W. Bowen vs Nelson Chase was resumed yesterday in the United States Circuit Court before Judge Shipman and the

special jury.
Mr. Hoar, Mr. Chatfield, Mr. Shaffer and Mr. Saw ver appeared as counsel for the plaintiff, and Mr. Charles O'Conor and Mr. J. C. Carter for the defendant.

RESUMPTION OF TESTIMONY FOR THE DEFENCE-MB

MATHEW CLARKSON ON THE STAND. Mr. Mathew Clarkson, sworn. Examined by Mr. Conor. Witness said :- I reside at Flatbush, Long Island; I was born in Whitehall street, New York, in 1796; I have lived in Flatbush most of my life; I lived in New York up to 1821; until I was twentyone years of age I lived in Whitehall street with my father; if I was away at all, I was away at school my father's house was at the corner of Whitehall street and Pearl street, on the right side of the way coming up from water; I lived on the block running from Pearl to Water street; lived in that house with my father until I was twenty-five years of age; I knew of Stephen Whitney living in that street: it is my impression that he resided on the opposite side of the way to my father; Mr. Whit lived on the right side of the street coming up from the water; my father's house fronted on Pearl street, as also did Mr. Whitney's house.

Cross-examined—I remember that John Lang, editor of the Morning Gazetle, lived right epposite to us. The witness named other persons who lived in Whitehall street. I did not know Stephen Jumel, but it is quite possible I may have heard of him.

TESTIMONY OF MB. WILLIAM KEMBLE. nim.

TESTIMONY OF MR. WILLIAM REMBLE.

Mr. William Kemble'sworn. He said:—I was born in 1795, in Pearl street, in this city; my father was Peter Kemble, a merchant; I was connected with the West Point Foundry; my father moved from Pearl street in 1817 to the southeast corner of Stone and Whitehall streets; it was No. 17 Whitehall street; I made my home at my father's house; I went to college in 1809; before going to college I have a recollection of a person living in Whitehall street of the name of Stephen Jumel. (Witness pointed out on the map the locality of the house.)

Q. About how long before your going to college did you know of Mr. Jumel occupying that house?

A. A number of years from 1804; it was a yellow brick double house, on the northwest corner of Pearl and Whitehall street; facing Whitehall street; I was attracted by looking at the peculiarity of Madame Jumel's carriage; it was a light grass green carriage, in which Madame Jumel used to drive out; I have seen the lady in the carriage taking a drive.

Crossexamined—I know that Mr. Jumel occupied

green carriage, in which Madame Jumel used to drive out; I have seen the lady in the carriage taking a drive.

Cross-examined—I know that Mr. Jumel occupied his house as I do that General Clarkson occupied his nown house; I may say that I know Mr. Jumel occupied the house, and as to Madame Jumel I know that, she also occupied it by seeing her leaving it and returning to it; I do not think there were any other inhabitants in Mr. Jumel's house.

Re-direct—Carriages were not so common in those days as they are now.

Mr. Carter proposed to read to the jury the will of Madame Jumel as it had been drawn up by Mr. William Ingils.

This was objected to by counsel for plaintif; but the objection was overruled.

The will, amid other clauses, contained provisions for William Ingils Chase and Eliza Jumel Chase, the son and the daughter of Mr. Nelson Chase, the defendant.

There was also admitted in evidence, after some opposition from counsel for plaintif, which was subsequently withdrawn, a paper found with the will above referred to. It was a paper containing the names of relatives of Mre. Jumel handed by her to Mr. Inglis at the time he was drawing her will.

Counsel for defendant also read in evidence the

will.

Counsel for defendant also read in evidence the will of Madame Jumei, dated April 15, 1563. This will was the will which left the bulk of the property away from Mr. Chase's family and conferred it upon religious and charitable institutions. It was to break this will that Mr. Chase had instituted a suit in 1866 in the State Court.

TESTIMONY OF MR. BRACKEN.

Mr. Bracken, a lawyer, was recalled, and said that while he was in Williamston, N. C., he made

inquiries for one Edward Griffin, and found that there was no such person there living.

TENTIMONY OF T. W. EDSELL.

Mr. T. W. Edsell, a lawyer, stated that he went East on the part of Mr. Chase to make inquiries after Jonathan Clarke, Phebe, his wife, and Polly and Betsy Bowen; be searched in towns in Massachusetts and Vermont; he was down there a few days ago; found that one Reuben Walker was dead; but before that was at Reuben Walker was dead; but before that was at Reuben Walker was dead; but before that was at Reuben Walker shouse and produced to him the receipt signed Daniel Walker. Witness produced an old account book, which had been given him by Reuben Walker. The object of this testimony was to identify a receipt that had been put in evidence by the defendant as a receipt signed by one Daniel Walker. The defence considered it material to prove this fact.

In cross-examination Mr. Edsell stated that he had received between two thousand dollars and three thousand dollars for his services from the defendant for these explorations.

In cross-examination Mr. Edseil stated that he had received between two thousand dollars and three thousand dollars for his services from the defendant for these explorations.

The remainder of the session was taken up with the introduction of documentary evidence relating to the marriage of Madame Junel in 1804, and to the residence of Mr. Jumel in Whitehall street, the latter part being proved, in this instance, by the production of the "New York Directory" from 1801 or 1802 up to 1814. The name of Eliza Bowen, 87 Reed street, appeared in the Directory for 1803-4, and after that it ceased to take its place there. Letters from the Jumels were also read, expressing a kindly feeling towards the Jones family, so often alluded to in the progress of the present suit.

Mr. O'Coner offered to read in evidence a letter which had been written by a person named Mumford, at Saginaw, to Mr. Chase, informing him that his wife was going on to New York to testify on behalf of the plaintiff, and stating further that a liberal compensation would seal her (the wife's) lips forever.

Mr. Hoar objected to the letter on the ground

lips forever.

Mr. Hoar objected to the letter on the ground that it was not proved that the wife knew of the contents of the letter.

Mr. O'Conor said the witness distinctly said she was in periect accord with her husband, and knew that the letter had been written.

Judge Shipman remarked that, inasmuch as the witness said she did not know of the contents of the letter, he would exclude it on that ground, but he would order that the letter be filed with the Clerk of the Court.

The further hearing of the case was adjourned until to-day, when, in all probability, the testimony for the deiendant will be brought to a close. From intimation hitherto made it is not unlikely that the plaintiff may offer some evidence by way of rebuttal.

# PALMER'S INJUNCTION AGAINST

Appeal from Judge Barbour's Decision at Special Term to the Superior Court General Term-Argument Upon the Appeal Postponed till Next Month.

Keeping in view the fact that two temporary in innctions have already been granted in the pending legal controversy between Chamberlain Palmer and Mr. Foley, and that one or other of them is alday in one form or another, it requires pretty vigfiant watchfulness not to get them. The injunction coming to the surface yesterday was that granted on behalf of Mr. Palmer against Mr. Foley, prohibiting him from any attempt to assume the duties of Deputy Chamberlain on account of his appointment by the Comptroller. It will be remembered that Judge Barbour, holding Special Term of the Superior Court, granted this injunc-

Term of the Superior Court, granted this injunction. This result was not satisfactory to Mr. Foley, and at the time of rendering the decision notification was given of an intention to appeal from the decision to the General Term. The latter term entered yesterday on its February term—Judges Barbour, Curtis and Seagwick on the bench.

Mr. Anthony R. Dyett, counsel for Mr. Foley, submitted in due form the papers necessary for perfecting his appeal. He called attention to the fact, however, that Judge Barbour, who has granted the injunction from which the appeal was taken, was a member of the appellate Court. As His Honor had granted the injunction, he did not deem him competent to sit in review of his own judgment. He asked, therefore, that another Judge sit in His Honor's place pending the argument on the appeal. ment on the appeal.

Judge Barbour said that such had not been the practice of the Court, and he saw no necessity of

making an exception in the present case.

Mr. Dyett said he was willing to have the argument before the two remaining Judges, but he was aware this could not be done without the consent of the opposing counsel.

Ex-Judge Edmonds, counsel for Mr. Palmer, insisted that the case should be heard before a full bench.

bench.

After some further remarks it was finally determined to put the case down for argument at the March term of the Court, and meantime till the decision upon the appeal the temporary injunction granted by Judge Barbour was ordered to stand in full force.

### MORE MANDAMUSES.

and Two Superior Court Officers After Their Salaries-Writs of Alternative Mandamus Granted Against the Comptroller-Enforcing a Decision of the Court of Appeals. The machinery of mandamuses is still kept in

lively motion. More applications for writs of peremptory mandamus against the Comptroller were made yesterday before Judge Davis, at Suprem-Court, Chambers. Mr. John McCabe was the first applicant. He invoked the aid of the Court to compel the Comptroller to pay him \$600, for services rendered pursuant to an appointment from the Board of Supervisors, as one of the cleaners of the new Court House. The claim was that the appointment was perfectly legal, that the services were performed and that he is entitled to his pay. The other two applicants were James Doyle and Thomas Feeley who ask to be paid their salaries as officers of th Superior Court from May 1 to June 11, 1872. It was stated that they both received their appointwas stated that they both received their appointment some time previous to, the date mentioned, that they are still employed as such officers, that they have continuously discharged their duties as such officers from the respective dates of their appointment up to the present time, and that, with the exception of the interval mentioned, they have been regularly paid their salaries. The further explanation was that at the time referred to there was a dispute between the superior Court judges and the Comptrolier as to which had the power of appointment, and that pending such dispute their salaries were withheld. The Court instened to quite an extended argument in each case, but would only grant writs of alternative mandamus, which the opposing counsel, though rather reluctantly, agreed to accept. This gives the Comptroller an opportunity to make a return to each writ, when they will come up for further argument on an order to show cause why peremptory writs of mandamus should not issue.

Scarcely had the above case been disposed of when Mr. W. C. Trull asked that the judgment of the Court of Appeals in the case of Phineas H. Kingsland vs. Mr. Palmer, City Chamberlain, be made the judgment of this Court. This will be remembered as an application for judgment of \$3,205 for services as Clerk of the Commissioners of Records. At the Special Term a decision was rendered in favor of the City Chamberlain. This decision was reversed at the General Term, when the case was carried to the Court of Appeals and the decision of the latter Court sustained. Judge Davis granted the application, and ordered that a peremptory writ of mandamus issue directing payment of the money, with interest from May 15, 1871. ment some time previous to, the date mentioned

# BUSINESS IN THE OTHER COURTS.

# SUPREME COURT-CHAMBERS.

Decisions.

Thomas Kine vs. Mary Farrail et al.-Motion granted.

Beling vs. Degraw et al.—Motion for an extra allowance denied, without costs. llowance denied, without costs.

Hart vs. Cauldweil et al.—Order for counsel.

Mutual Life Insurance Company vs. Finch.—Sai
McGay et al. vs. Green et al.—Report confirm and order granted.

Kavanagh vs. The New York Catholic Protectory, &c.—Report confirmed and decree granted.

# SUPREME COURT-SPECIAL TERM.

Decisions. By Judge Barbour.

Strong vs. Woodward Steam Pump Manufacturng Company.—Order for Judgment.

Labloner vs. Cassanova.—Motion granted.
Gersel vs. Schneider.—Order granted.
Brown vs. New England Mutual Life Insurance
Company.—Judgment for defendant on demurrer.

# COURT OF COMMON PLEAS-GENERAL TERM.

Decisions Upon Cases Argued During the January Term.

This Court met yesterday and rendered decisions ipon cases argued during the January term. The

following are the decisions:—

John A. Eagleson vs. James K. Sproll, impleaded, &c.—Judgment as to Sullivan claims reversed; new trial ordered; costs to abide the event, Opinion by Index Robinson. by Judge Robinson.

John Hughes vs. The Mercantile Insurance Company.—Judgment affirmed. Opinion by Judge Larremore.

emore. derick W. Cameron vs. Frank Derkheim. Roderick w. Cameron vs. Judge Robinson.
Anson Bangs vs. The Bine Ridge Railroad Company et al.—Demurrer overruled; order appealed from affirmed. Opinion by Judge Larremore.
Sheridan vs. Chariick.—Motion for literty to go to

Court of Appeals granted. Opinion by Judge Joseph F. Daly.

William E. Smith vs. Benjamin Douglass.—Judgment reversed and new trial ordered; costs to abide event. Opinion by Judge Robinson.

McKeller vs. Seigler.—Judgment reduced to one month's rent and affirmed as to that, and rescinded as to the residue. Opinion by Judge Loew.

Weinberger vs. Fauserback.—Judgment reversed. Opinion by Judge Loew.

Hubbeil vs. Schreyer.—Judgment affirmed as for the extra work done by Muldoon for Schreyer, and reversed as to Hubbeil except as to the materials furnished within three months, and affirmed to the extent of these materials. Referee's findings upon Muldoon's claim reversed unless Muldoon consents to reduce the judgment to \$833. Opinions by Chief Justice Daly and Judge Robinson.

Alkers vs. Rohde.—Judgment affirmed. Opinion by Judge Joseph F. Daly.

Murray vs. White.—Judgment affirmed. Opinion by Judge Lawrence?

Brenahan vs. Darrien.—Judgment affirmed. Opinion by Judge Joseph F. Daly.

Miller vs. Post.—Appeal dismissed without prejudice to rehearing on all the papers. Opinion by Judge Lawrence.

James vs. Stewart.—Judgment affirmed.

James vs. Stewart.—Judgment affirmed.
After rendering the above decisions the Court adjourned sine die.

COURT OF COMMON PLEAS-SPECIAL TERM.

Decisions.

By Judge Loew.

Henry Bowland vs. S. C. Ryder.—Motion granted.
J. D. Monell vs. J. J. Higgins.—Motion to vacate order of arrest denied.
R. Howell vs. H. H. Murtaugh.—Motion denied.
S. Beer vs. N. Vanderworlbach.—Same.
J. D. Phyfe vs. J. P. Olmstead.—Same.
Van Allen Pugsley vs. H. P. Hunt.—Same.
Rebecca Reilly vs. H. A. Reilly.—Limited divorce,
J. C. Lane vs. E. M. Lane.—Divorce granted.

### COURT OF GENERAL SESSIONS-PART I.

Before Recorder Hackett. Opening of the Term-The Grand Jury

Discharged Till the 17th Inst. The February term of this Court was opened yes terday, His Henor the Recorder presiding. As there was a Grand Jury empanelled in the Oyer and Terminer the Grand Jurors summoned for serand terminer the Grand Jurors summoned for Service in the General Sessions were discharged till the third Monday, the 17th inst. The Clerk proceeded to call the panel of petty jurors for both branches of the Court, and those summoned for Part 2 were directed to attend at the Chamber of the Board of Aldermen, where His Honor Judge Sutherland will preside.

An Assault and Battery. Thomas Bourke, who was indicted for attempting

to rob George Bourke on the 19th of January, pleaded guilty to assault and battery. As there were mitigating circumstances His Honor sent him to the Penitentary for six months.

Alleged Robbery-The Accused Honorably Discharged.

The first case called to the consideration of the jury was an indictment for robbery preferred against Thomas Donohue and Thomas Brown, who against Thomas Donohue and Thomas Brown, who were charged with stealing a silver watch from Frederick Windhorn, in Second avenue, on the night of the 26th of October. Brown pleaded guilty at a former term of the Court to larceny from the person and was sent to the State Prison. The testimony against Donohue showed that he did not act in complicity with Brown, and, having established his good character by witnesses, the jury rendered a verdict of not guilty without leaving their seats. Another Case of John Dean and His Mary Ann.

The next case was a charge of assault and battery against a brawny Irishman, who gave his name as John Hughes, and during the progress of the trial some novel and interesting facts were brought out. The complainant was a genteel-looking young lady, who gave her name as Mary Ellen Moore, and stated that she resided at 150 East 127th reason or other not developed in the course of the examination, Mrs. Moore married Hughes, who examination, Mrs. Moore married Hughes, who drove her coach. The young lady swore that on the 21st of November Hughes seized her by the throat and squeezed her. The defendant testified in his own behalf and said that he was married to Mrs. Moore on the 17th of Angust, and that on the day in question Miss Moore was in the act of throwing a large dinner bell at him when he caught her arm. He denied the allegation made by the complainant that he squeezed her, although she was corroborated by a servant.

The jury, after deliberating for an hour, rendered a verdict of not guilty.

An Assault.

An Assault. James Maloney, who was charged with aiming a loaded pistol at Edward Murtaugh on the 20th of December, pleaded guilty to a simple assault. The circumstances showed that Murtaugh was pursuing the prisoner, who threatened to shoot him, but before he fired a policeman knocked the pistol out

before he fired a policeman knocked the pistol out of his hand. The Recorder in passing sentence said that so long as he presided in the Court he would punish the wanton and reckless use of the pistol and knule to the full extent of the law. As the pistol went off by accident, and as the circumstances did not show that Maloney intended to do the complainant any injury he sentenced Maloney to the Penitentiary for one month.

Daniel McLoughlin, charged with stealing \$100 from Barney Mallon on the 4th of December, pleaded guilty to an attempt at grand larceny. Alexander Messager, indicted for petit larcens from the person, pleaded guilty to an attempt to commit that offence. On the 21st of December he were each sent to the State

Larcenies.

Alleged Conspiracy by Residents of North Carolina-A Nolle Prosequi Entered on the Indictment.

On motion of District Attorney Russell a nolle prosequi was directed to be entered on an indict-ment preferred in April, 1868, against George W. ment preferred in April, 1868, against George W. Swepson, Robert R. Swepson, E. Nye Hutchinson, Robert F. Hoke and Thomas J. Summer for conspiracy to defraud Thomas J. Carter by representing that certain lands in North Carolina were more valuable than they really were. Mr. Russell informed the Court that there was a civil suit pending, but that it had never been prosecuted to judgment. His Honor granted the motion.

# JEFFERSON MARKET POLICE COURT.

Burglary. William Thompson and Frank Shuttenberg were charged with burglary, in entering various houses in the Nineteenth precinct during last summer while the families were in the country, and steal while the families were in the country, and stealing much valuable property. Officer Mullen had
received information which pointed to them as the
guilty parties, and arrested them on Sanday evening at a bouse in Greene street. A valuable clock,
worth \$500, and other property, for which an owner
is desired, were recovered by the officers. The
prisoners were remanded to await further examination.

Grand Larseny.

Grand Larceny. Mary Farrell was charged with stealing \$500 from Mrs. Jane O'Neil, of No. 422 West street. A bank book was introduced showing that Mary had deposited a similar sum in a bank in South Brook-lyn. She claimed it was a portion of a legacy left her by deceased friends in Ireland, but was committed to answer.

Samuel Thomas Tripp, a negro, was charged with stealing a coat, valued at \$60, from William Pryor, of No. 90 Wooster street. He was locked up to

# BEATH OF A COURT OFFICER.

Mr. Andrew Kelly, for several years past one of the officers of the Court of Common Pleas, died yesterday. He was a cousin of ex-Sheriff Keily, and by his faithful discharge of his duties and marked gentlemanly courtesy had endeared to himself a large circle of friends. The funeral will take place to-morrow.

# COURT CALENDARS-THIS DAY

SUPREME COURT-CIRCUIT-TRIAL TERM-PART SUPREME COURT—CIRCUIT—THAL TERM—PART 1—Held by Judge Barrett.—Nos. 1008, 684, 208, 1076, 1080, 1082, 1084, 1086, 1092, 1092½, 1094, 10943½, 1096, 1088, 1100, 1102, 1104, 1106, 1108, 1110.

SUPREME COURT—SPECIAL TERM—Held by Judge Van Brunt.—Demurrers Nos. 32, 35, 38; 1aw and fact Nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 35½, 36, 37, 38, 39, 40, 41, 42, 42½, 43, 44, 45, 46, 47, 48, 49, 50,

SUPREME COURT—GENERAL TERM.—Nos. 120, 180, 182, 258, 188, 189, 192, 194, 195, 196, 197, 198, 199, 200, 201, 203, 204, 205, 206, 207, 208, 210, 212, 215, 216, 217.

SUPREME COURT—CHAMBERS—Held by Judge Da-

216, 217.
SUPREME COURT—CHAMBERS—Held by Judge Davis.—Nos. 14, 34, 47, 57, 97. Call 102.
SUPERIOR COURT—TRIAL TERM—PART 1—Held by Judge Monell.—Nos. 1899, 493, 1231, 1825, 1129, 1571, 183, 1609, 1871, 1435, 479, 1307, 1471, 1261, 377. Part 2—Held by Judge Van Vorst.—Nos. 870, 2920, 1512, 1596, 1572, 1482, 1949, 1698, 560, 1578, 1288, 314, 1584, 1388, 782.
COURT OF COMMON PLEAS—TRIAL TERM—PART 1—

1596, 1572, 1482, 1940, 1608, 560, 1578, 1288, 314, 1584, 1388, 782.

COURT OF COMMON PLEAS—TRIAL TERM—PART 1—Held by Judge Robinson.—Nos. 1696, 2790, 1124);
896, 59, 1398, 08, 1598, 1051, 1156, 374, 2495, 1721, 763, 506, 2807, 1247, 1854, 1303, 1685, 512, 1649, 612, 613, 618, 1992, 1644, 3044, 50, 1709, 164, 328, 1352, 280, 1256, 1599, 1760, 1617, 1986, 481, 1337, 2921, 1512.

COURT OF COMMON PLEAS—TRIAL TERM—PART 2—Held by Judge Loew.—Nos. 49, 1706, 1760, 1751, 1789, 1762, 1767, 1768, 1770, 1771, 1772, 1777; 1780, 1781, 1783, 1762, 1767, 1768, 1770, 1771, 1772, 1777; 1780, 1781, 1783, GOERT OF COMMON PLEAS—EQUITY TERM—Held by Judge Larremore.—Nos. 13, 17, 23, 34, 51, 68.

MARINE COURT—TRIAL TERM—PART 3—Held by Judge Spaniding.—Nos. 1334, 1737, 516, 912, 930, 932, 941, 944, 948, 946, 953, 956, 988, 1004, 1035, Part 2—Held by Judge Shea.—Nos. 1106, 1103, 1243, 1247, 1365, 1415, 1259, 1901, 1367, 1275, 1917, 1269, 1411, 1425, 767, Part 1—Held by Judge Joachimsen.—Nos. 592,

1240, 1328, 1192, 1278, 1228, 1114, 1104, 484, 1272, 1318, 1330, 1354, 1356.

### BROOKLYN COURTS.

UNITED STATES COMMISSIONERS' COURT. The Special Tax.

Before Commissioner Winslo Michael McGoey, of the corner of Jay and Tillary streets; John Gallagher, of No. 252 Bridge street; Ernest Seeback, of No. 52 Tillary street, and Henry McKenna, of Hunter's Point, were before the Com-missioner yesterday on the charge of selling liquors and cigars without paying the special tax required by law. The cases were adjourned until next

SUPREME COURT-SPECIAL TERM.

Kelsey, the Tarred and Feathered-Remanding the Accused Parties.

Justice Montfort, of Huntington, L. L., held Royal Sammis, George B. Banks and M. Candius Prime to await the action of the Grand Jury a short time since, on the charge of being implicated in tarring and feathering of Charles G. Keisey, who disappeared from that place several months ago. After the action of the Justice an effort was made by the counsel for the accused to have them discharged. A writ of habeas corpus and certiorari was obtained from Judge Pratt, of the Supreme Court, before whom the case was argued, and the case was reported in the Herald at the time.

Yesterday morning Judge Pratt rendered a decision, discharging the writ and remanding the accused. In his opinion, the Judge says:—

cision, discharging the writ and remanding the accused. In his opinion, the Judge says:—

The only question to be determined in this proceeding is whether the defendants are entitled to be discharged upon a writ of habeas corpus. The writ of certiorari previded by statute is concurrent remedy with that of habeas corpus and is a substitute for the latter where the personal attendance of the prisoner is not required. It is also occasionally issued simultaneously with the writ of habeas corpus to obtain a more definite and full return of the cause of imprisonment or detention of a party. It is conceded, on the part of the prisoners, that the imprisonment is under actual process valid upon its face, and that it was issued by a magistrate having jurisdiction. It is not controverted that the finding of the Justice that a "crime had been committed" is fully warranted by the evidence. The magistrate has gruphy warranted by the evidence. The magistrate has further discussion of the Grand Jury. This last finding the rot the claim is not supported by the evidence, and hence they should be discharged. The practice is now well settled that the merits of a trial before a committing magistrate will not be examined upon a writ of habeas corpus when there is no suggestion that he has mistaken the law or exceeded his jurisdiction. The writ of habeas corpus is not given for an appeal and review, but simply to try the issue whether the party is illegally deprived of his liberty. Under the present practice, as I have above stated, the prisoners are not so restrained, but are held upon a commitment regular and valid upon its face, and regularly issued and served in the course of a judicial proceeding. The jurisdiction of the Justice who acted in this matter is snquestioned. Whether he adhered with technical accuracy to the rules of evidence or discarded some and gave undue credence to other testimony are questions not open to review in this matter. I am not callied upon to define with a two whether he adhered with technical accuracy

### BROOKLYN COURT CALENDARS.

SUPREME COURT—CIRCUIT.—Nos. 51, 132, 482. CITY COURT.—Nos. 21, 22, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62.

### COURT OF APPEALS CALENDAR.

ALBANY, Feb. 3, 1873, The following is the Court of Appeals day calendar for February 4:—Nos. 56, 90, 91, 58½, 12, 47, 93, 95.

### THE BURYEA HOMICIDE.

Further Testimony Taken Before the Coroner Yesterday-The Inquest Again Adjourned.

Simmons, charged with the killing of Nicholas Duryea, was resumed yesterday afternoon, at two o'clock, in Bellevue Hospital. The attendance was larger than at the previous hearing, the large hall in which the investigation was held being completely filled with spectators. Those present were, for the greater part, policy dealers, the majority of them being friends of the accused man. widow of Durvea was present, attired in deep mourning, attentively watching the progress of the hearing. Mrs. Duryea, from her demeanor and appearance, seems to be a perfect lady, and much sympathy was manifested for her. The prisoner was brought in upon a stretcher, as he is still suffering from the effects of his fractured leg. He was as tenderly cared for as a baby, more than half a dozen attendants waiting to do his bidding, Colonel Fellows, ex-Assistant District Attorney, was present on the part of Simmons. The people were unrepresented.

Windham Stryker, who was examined before, was first placed upon the stand and asked a few unimportant questions, which did not contradict anything he had previously sworn.

Charles Anderson, of No. 211 East Fifteenth street, clerk in the General Post Office, register de-partment, was next examined:—I left the Post Office on the 16th of December about seven o'clock

Office on the 16th of December about seven o'clock P. M. to go up town; as I turned to go up Nassau street I

HEARD A CRY OF POLICE;
I and several other parties ran toward the doorstep, from whence the cries came; when I arrived opposite sutherland's restaurant I saw the mea on the sidewalk, one kneeling on the top of the other; I stepped up to see what the matter was; just as I stepped up to see what the matter was; just as I stepped up to see what was going on Simmons got up; as he was getting up he exclaimed. "Now I have got the best of you;" he attempted to step backward and fell right on the street; he exclaimed, "I have broken my leg;" some parties came forward and assisted him into Sutherland's; saw no mevement of either party; saw no blows or stabs given nor any instruments in any one's hands; afterwards saw the instrument which was taken to the station house; a short time afterwards 1° and several others went into Sutherland's, when the police came up and arrested Simmons; some conversation passed between the witness Stryker and the prisoner; could not hear what it was; some-body said, in answer to an inquiry, that two men were near being robbed going down Laberty street; I think the person who said that was Stryker; did not hear Simmons say anything.

To a Juror- I don't remember whether Simmons said, "I have broken my leg," or "My leg is broken." Richard J. Hoban sworn—I reside at 156 Broadway; I am a clerk at 16 Exchange place; on the leth of December I was at 69 Liberty street, when I heard a row on the street; there seemed to be several

PERSONS MAKING A NOISE; they were talking loud; I went down stairs to the

way; I am a clerk at 16 Exchange place; on the I floar of a power I was at 69 Liberty street, when I heard a row on the street; there seemed to be several PERSONS MAKING A NOISE; they were talking loud; I went down stairs to the street and saw two men on the ground; the deceased was underneath and the prisoner was on top of him; I saw the prisoner rise a little and stab the deceased with an instrument which glittered in the light; I then remarked he was stabing him with something; he stabbed him several times around the head somewhere; I cannot tell where else he struck him; I was sure he was stabbing him with something; he stabbed him several times around the head somewhere; I cannot tell where else he struck him; I was sure he was stabbing him, for I saw the instrument glitter; I then heard the prisoner say, "Now I have got the best of you;" after saying that he got up; in getting up his foot got entangled with the foot of deceased, and he fell backwards into the gutter, exclaiming, "I have broken my ankie;" he was then lifted up and carried over to Sutherland's; I went for the police; on going I met Officer Webber, and I said, "Come around with me to Sutherland's; I went for the police; on going I met Officer Webber, and I said, "Come around with me to Sutherland's; the prisoner did the stabbing with his right hand; that is all I know.

To a Juror—I could not tell when the prisoner raised himself up whether there was anything the matter with his leg or not.

William Heaton was next examined:—I board at No. 7 Franklin street; I am a steel and copperplate printer; I was a witness to the occurrence on Liberty street on the evening of the 16th of December; I was working at 65 Liberty street, on the second noor; I heard a noise in the street, as if there were several men engaged in a row; I heard semebody holoiong "Police! police!" and "Murder!" several times; I then went down stairs and saw two men lying on the sidewalk; one was on the top of the other; I never saw either man before that night; just as I got up

again, and as he did so I saw something in his hand

GLISTEN IN THE GASLIGHT;
he then struck the other man again some place around the body; the legs of the man underneath gave a lew quivers; the man on top then got up and got out in the street; he staggered and fell upon his back, his nead toward Nassau street; he turned himself over on his side and called out "Bill" three or four times; a man came up then and helped him into Sutheriand's; I then went up stairs and went back to my work; I have identified Mr. Simmons, the prisoner; he was the one who was on top.

At the conclusion of the testimony of this witness the inquest was again adjourned until to-day. The repeated delay caused great dissatisfaction to those who were present, as the evidence could all have been taken yesterday.

THE GREAT STONE OF THE TOMBS.

Justice Demands That It Be Rolled Away and Its Occupants Brought Forth for Trial.

Murderers' Row to Give Forth All Its Culprits.

Judge Brady's Charge to the Oyer and Terminer Grand Jury.

Prompt Trial of All Parties Charged with Murder.

Scannell To Be Tried Next Monday-King on the Monday Following.

At no period in the history of the criminal courts of this city has such grave importance attached to the assembling of the Court of Oyer and Terminer as at the present time. Upon the spirit manifested by the Judge depended results of incalculable interest-results determining whether the use of the pistol, knife and bludgeon is to be restricted; whether murderers are to have meted out to them the prompt punishment their crimes merit; whether citizens can walk in public streets or ride in public vehicles feeling that they can rely on the ægis of the law for protection. The opening yesterday of the February term of the Court gave assurance, happily, of these results and corresponding terror to the indicted murderers now filling the City Prison. Judge Brady, always prompt-and unyielding in the dis-charge of his duties, showed himself the right man in the right place. It is unnecessary to say that the court room was crowded to its utmost capa-city, the expectation being that Scannell, King and some of the other indicted murderers now confined in the Tombs would be arraigned for trial. In this respect the crowd, however, was disap-pointed, for Scannell was the only one brought

pointed, for Scannell was the only one broughts into Court; but, though the centre of observation, he paid no heed to it, but chatted in the gayest mood imaginable with his counsel.

EMPANELLING THE GRAND JURY.

First in order after the formal opening of the Court, which took place promptly at ten o clock, was the empanelling of the Grand Jury. One more juror appeared than was wanted, but as one of the others wished to be excused from duty the permanent organization of the jury was easily and speedily accomplished. The following are the names of the Grand Jury:—Foreman, Hugh Auchincloss; John Campbell, Myer Myers, Robert C. Livingston, Justus L. Bulkley, Samuel S. Sands, William H. Philips, Jacob Goldsmith, William H. Knochfel, Jerome B. Ransom, John Endicott, Charles H. Kerner, Edward A. Baldwin, Bernard Smith, John F. Zebley, William L. Andrews, David W. Bruce, James H. Pinkney, John J. Sinclair, George Law, Jr., B. Lorrillard Harsell, Jacob Capron, Robert M. Finkhauser.

hauser.

CHARGE TO THE GRAND JURY.

Judge Brady, rising, proceeded at once to charges
the jury. He spoke with slow but solemn earnestness, and every word was listened to, not only by
the members of the jury, but by the immensethrong filling the court room, with the most eager
attention. His charge was as follows:

GENERAL JURY The oath just admin-

attention. His charge was as follows:—

Gentiemen of the Grand Juny—The oath just administered to you expresses, perhaps, the best manner in which you are to discharge your high and responsible duties. You are to present no man through envy, hatred or malice, and you are to excuse none through fear, favor or affection. You are followed not through fear, favor or affection. You are placed as

to watch, in some manner, over the actions and characters of your fellow citizens. Your duties are very solemn, and are to be executed with great caution and care. The presentment of a citizen under indictment must not be done on hearsay evidence; but as to that you must be advised by the District Attorney and his assistants. On the other hand, you should present no man on remote probabilities or unsubstantial festimony. Still no persons, no matter how high their social, political or protessional positical feetings, energy and personated in the prosecution of offenders against the law are the best safeguards against the lawless. You should remember that any delay in the prosecution of criminal justice embodiens leaders to a lessening of respect for the Courts. If it was necessary, all the power of the State should be brought to bear to

if it was necessary, all the power of the State should be brought to bear to

By their indictments they were to teach those who pressumed that they were above the law that the statutes could not be defied with impunity. As to the use of the pistol and knife, it had become almost a mere matter of annisement. The pistol and the other weapons named by the law as deadly should be prohibited, unless to authorized officers, and the carrying of them should be punished, say, and except in case of men of tried and proved the same of the prohibited, and proved the same of t

At the conclusion of the charge the Grand Jary retired.

At the conclusion of the charge the Grand Jury retired.

Mr. Phelps, District Attorney, stated that the case of Stokes was then occupying his attention, before Judge Boardman, but he desired to announce that as soon as he got through with this matter he should be able to proceed at once with the trial of John Scannell, indicted for the murder of Thomas Donohue, and then with the trial of John Scannell, indicted for the murder of Thomas Donohue, and then with the trial of James C. King, indicted for the murder of Asthony F. O'Neil. Appearing as counsel for Scannell were william A. Beach, Charles S. Spencer and Williams F. Howe.

Mr. Spencer asked that two weeks' time be permitted the counsel for preparation. They had a great number of witnesses to examine, and the nature of the defence was such that fully that length of time was necessary. He would stipulate to try the case two weeks from to-day.

Mr. Beach urged that fully two weeks intervene before the trial be commenced.

Justice Brady remarked that the state of the public mind was such that it made it desirable that the trials of persons accused of crime, and particularly of homicide, should be approached as speedily as possible. He would set down the trial of Scannell for next Monday, and that of King for the Monday following.

Mr. Howe earnestly appealed for a further delay; but, after listening patiently to the conclusion, His Honor said that he could not change the time.

Mr. Beach urged further that in the case of King they were not yet prepared. It was very important to the prisoner that testimony as to his mental condition should be introduced, and that involved the bringing of witnesses from other States.

The various counsel more persistently urged delay, but it was of no use. Judge Brady refused to change his decision. The Court then adjourned till this morning.

COUNSEL FOR SCANNELL.

The defence in the Scannell case-lifes in counsel's hands well conversant with criminal jurisprudence. Very many of the late murder and homicide cases, the latter of

Half a Million Salmon Eggs from the Rhine for the Hudson and the Connecticut-A German Present to the United

Professor Spencer P. Raird. Assistant Secretary of the Smithsonian Institution and United States Commissioner of Fish and Fisheries, accompanied by his Private Secretary, Mr. H. E. Rockwell; Dr. J. H. Slack, State Commissioner of Fish and Fisheries, of New Jersey; Dr. Hudson, State Commissioner of Fisheries, of New Jersey; Dr. Hudson, State Commissioner of Fisheries, accompanied by his Private Secretary, Mr. H. E. Rockwell; Dr. J. Hudson, State Commissioner of Fisheries, accompanied by his Private Secretary, Mr. H. E. Rockwell; Dr. J. H. Slack, State Commissioner of Fisheries, accompanied by his Private Secretary, Mr. H. E. Rockwell; Dr. J. H. Slack, State Commissioner of Fisheries, accompanied by his Private Secretary, Mr. H. E. Rockwell; Dr. J. H. Slack, State Commissioner of Fisheries, and Fisheries, and Fisheries, and Fisheries, and Fisheries, accompanied by his Private Secretary, Mr. H. E. Rockwell; Dr. J. H. Slack, State Commissioner of Fisheries, and Fisheri sioner on same subject, of Connecticut, and Mr. Seth Green, of this State, the great cultivator of shad, salmon and other fine fish, are in the city, awaiting the arrival of a valuable lot of salmon Iwo hundred and fitty thousand of these were purchased for our government at about \$40 per thousand. The other quarter of a million is a present to the United States from the government of Germany. Mr. Rudolph Hessel, a German scientist, who has devoted many years to the art of cultivating fish most suitable for food, comes in charge of the delicate freight. The greatest care is necessary in transferring the eggs, in their present condition, especially in a severely cold climate like this at this season. While they require the usual temperature of their natural element a nipping frost might kill them. They will be conveyed from the German steamer the moment she arrives, facilities having aiready been made at the Custom House to transfer them at ence, in the Bay, to a government steamer for early distribution and conveyance to the hatching houses at Newcastle, on the Hudson, and to similar places on the Connecticat River. Those two places, it is understood, will receive each one-half of this quota of the precious seed of the genusalino. Salmon eggs are becoming quite an article of commerce. sand. The other quarter of a million is a present

of commerce.

Dr. Slack has several thousand young salmon from the Sacramento, which are to be placed in the Susquehanna. Horatto Seymour and Hon. Robert B. Roosevelt, member of Congress of this city. Commissioners of the State of New York, will join Proceedings of the missioners of the State of New York, will join Pro-fessor Baird and the other Commissioners upon the arrival of Mr. Hessel with his precious charge. The steamer left Bremen on the 15th of January and is now due.